OIPE IAP18
JUL 17 2006
PATENT & TRADEMARK OFFICE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	09/927,972	Confirmation No. 5997
Applicant	:	Gandy, et al.	
Filed	:	August 10, 2001	
TC/A.U.	:	2163	
Examiner	:	Linh Black	
Docket No.	:	1904.101	
Customer No.	:	52529	

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:

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on July 10, 2006

Diane Taylor

Diane Taylor

DECLARATION OF MARK VAN DE CASTEELE
SUBMITTED UNDER 37 CFR § 1.132

Dear Sir:

I, Mark Van De Casteele, being duly sworn, on oath depose, state, and declare as follows:

1. I am over the age of 21 and competent to make this Declaration.

2. I reside in the state of Texas.

3. I am and have been the Vice President and Chief Financial Officer of T-Soft, LLC, the general partner of T-System Technologies, Ltd. since May 22, 2002 and am very familiar with the computer template chart product which corresponds to the invention claimed in the subject patent application.

4. The commercial business of T-System Technologies, Ltd. is primarily the development and sale of computer template charts, as recited in Claims 1-37 of the subject application.

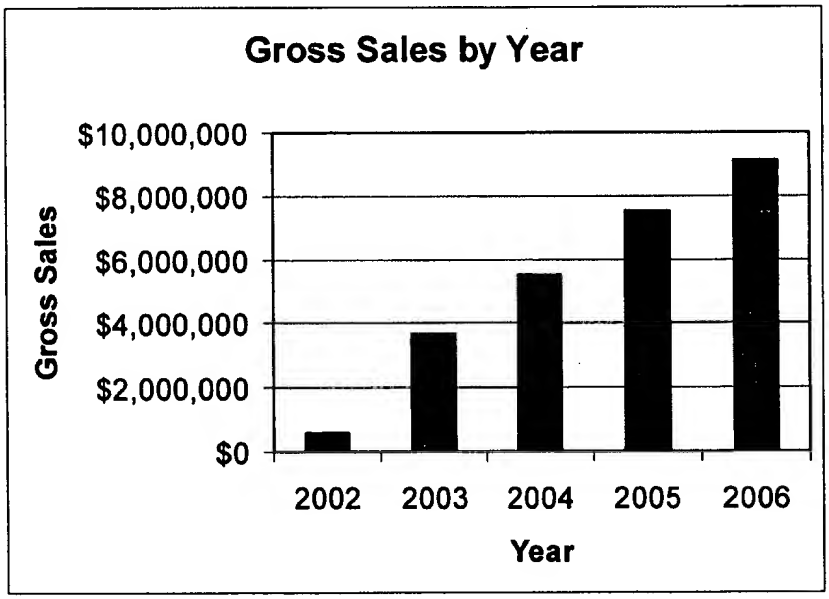
5. The T-System computer template chart product is marketed under the trademark T SYSTEM^{EV}, registered in 2002.

6. The T-System computer template chart product is used by over 98 customers in the United States.

7. The commercial products correspond to the invention described in Claims 1-37 of this patent application. In particular, please note in the following, the similarity between the figures from the subject patent application, the claimed elements, and screen shots of the product marketed:

Patent Application	**Claimed Element**	**Screen Shots of Product**
Figs. 7-8	Templates for selection by a user	Exhibits A - B
Figs. 9A-15	Template for abdominal pain with inquiries selectable by user	Exhibits C – G
Fig. 16	Report	Exhibit H
Figs. 17-19	Template and sub-template with modifiers selectable by user	Exhibits I – K
Fig. 20	Report	Exhibit L

8. The template chart product was first introduced commercially to the market in 2002, and since that time, gross sales of the product have, on average, more than doubled every year, as depicted by the following chart (wherein figures for 2006 are projected based on sales through May of 2006):



9. In the four years since the introduction of the template chart product in 2002, T-System's share of the emergency department physician documentation market has increased from zero (in mid-2002) to 27% (in mid-2006), making Applicant's product the most used template charting software in emergency medicine. The remaining market share (63%) is shared by approximately nine other products.

10. There are a number of important features of the T-System template charts that are highly appreciated by users. For example, for a particular case, users may select a template from a list of templates, which selected template includes inquiries for most items for which medical data is needed.

11. Another feature appreciated by users is the ability to "drill down" on selected medical inquiries to sub-templates which provide a number of "modifiers" which may be

associated with the selected medical inquiry to provide additional detail relating to the selected inquiry. When the sub-template is closed, the modifiers remain with the inquiry on the template.

12. A further feature appreciated by users is the ability of the template chart product to readily generate an easily-readable report of the data entered by a user.

13. As a result of the foregoing important features of the subject invention, users are able easily, quickly, and accurately to enter medical data into a computer database, from which reports may readily be automatically generated. Exposure to liability for omissions is also reduced since inquires needed for most diagnoses are included on the templates.

14. The commercial success of T-System's template charts has not been the result of consumption by purchasers previously "tied" to T-System, as evidenced by the fact that T-System was formed to develop and market the template chart recited in Claims 1-37 of the subject patent application, and consequently, had no customer base prior to the invention which could be said to be "tied" to T-System.

15. Furthermore, commercial success of T-System's template charts was not the result of heavy promotion or advertising, or other business events extraneous to the merits of the invention set forth in the claims. More specifically, there have been no "give-aways" of the product defined by the claims, or any other inducements or concessions in selling the product defined by the claims.

16. Commercial success of T-System's template charts has been the result of the advantageous usability, automated report generation, reduced risk of liability, and economic results attained by the subject matter set forth in the claims of the application, which I have read and understand.

17. In summary, I declare that T-System Technologies, Ltd., whose commercial business is primarily the development and sale of computer template charts as recited in Claims 1-37 of the subject application, is an increasingly successful company. Our business has grown from zero in 2002 to projected gross sales of over $9,000,000 in 2006, a period of just four years, with a corresponding market share which has grown from zero to approximately 27% in the

same time period. In light of the foregoing, it is my opinion that the T-System template chart may in good faith be accurately regarded as a commercial success, and that this success is solely and directly related to the claimed features of the template charts.

18. I declare that all statements made herein of my own knowledge are true and correct, and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-identified patent application or any patent issuing thereon.

Signed this 10th day of July, 2006.

Mark Van De Casteele

STATE OF Texas)
)
COUNTY OF Dallas)

SUBSCRIBED AND SWORN to before me, a Notary Public, this 10th day of July, 2006.

TINA M CLARK NOTARY PUBLIC STATE OF TEXAS EXPIRES 05-05-2010

Notary Public

My commission expires on: 5/5/2010

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- Dx / DI

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- Clinical
- Discharge
- Nurse
- Coding

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- Instrux/Rx

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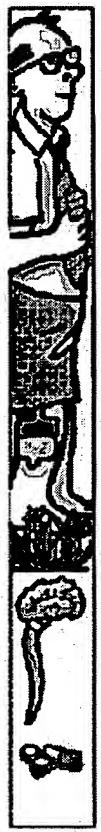
- Discharge
- Lock

Addenda

Choose One Item

General | Pediatric

Trauma	Medicine
01 Head Injury	26 Headache
02 Eye Problems	27 Ear Complaints
03 Head Injury, Facial	28 Nose
04 Neck/Back Pain or Injury	29 Throat or Dental Pain
05 Shoulder Injury	30 Cough
06 Upper Extremity Injury	31 Wheezing / Asthma
07 Trunk Injury	32 Dyspnea
08 Low Back Pain or Injury	33 Chest Pain
09 Hand/Wrist Injury	34 Palpitations
10 Hip Injury	35 Upper Extremity Pain
11 Lower Extremity Injury	36 Abdominal Pain
12 Ankle/Foot Injury	37 Vomiting / Diarrhea
13 Plantar Puncture Wound	38 GI Bleeding / Rectal Pain
14 Pediatric Illness	39 Female GU
15 Pediatric Asthma	40 OB Problems
16 Pediatric Trauma	41 Male GU
17 MVA	42 Lower Extremity Pain
17a MCA Bike Pedestrian	43 Skin Rash / Abscess
18 Multiple Trauma	44 Allergy
19 Fall	45 Changed Mental Status
20 Assault	46 Focal Neuro Deficit
21 Animal Bite	47 Dizzy
22 Major Burn/Smoke Inhalation	48 Syncope
23 Recheck / Suture Removal	49 Seizure
24 General	52 Overdose
25 Critical Care	53 Substance Abuse
25a CPR	54 Psych



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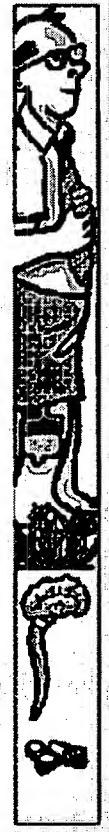

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ABDOMINAL PAIN

time: _____ O

arrived: pvt vehicle EMS _____ context: _____

historian: patient EMS family _____ limited by: _____

O HPI

chief complaint: abdominal pain flank pain _____

started: just PTA today last night yesterday _____

_____

still present _____ gone _____ timing: _____

quality:
"pain"
sharp
stabbing
cramping
burning
dull
migrating
...
well localized
diffuse
_____

location:
generalized
R chest- central L chest
epig
RUQ LUQ
upper
R flank L flank
R abd L abd
peri
RLQ LLQ
lower
R pelvic L
suprapub
R back L back

__radiating to: _____ __additional abd pain _____

associated symptoms:
__nausea _____ __vomiting _____
__loss of appetite _____ __diarrhea _____

severity of pain: _____

modifying factors: _____ O Tx PTA

_____

_____

_____

__similar symptoms previously: _____
once twice sev times many times -- occasionally frequently
milder as bad worse varying
O _____

__recently seen _____
here another / ED office clinic / hospitalized
O _____

O ROS

GI
__constipation _____
__black stools _____ bloody __
__vomiting blood _____
URINARY
__difficulty w/ urination _____
__pain w/ urination _____
__frequency _____
Female __pregnant _____
LNMP: _____
__missed periods ___ irreg ____
__abnormal bleeding _____
__all systems neg. except as marked

CONSTITUTIONAL
__fever _____ chills _____
Neuro & EENT
__headache _____
__sore throat _____
__blurred vision _____
CVS & Pulmonary
__chest pain _____
__difficulty breathing _____
__cough _____
MS & Skin
__joint pain ____ back pain ___
__skin rash _____

_____

_____

O PAST Hx

__negative __see nurses notes
__peptic ulcer _____
__gall stones _____
__bowel obstruction _____
__kidney stones _____

__heart dz __neuro dz
__lung dz __GI dz
__renal dz __other dz

__HTN ____ diabetes ___
__hyperlipidemia _____

__previous surgery _____
__abdominal surgery _____

_____

_____

O MEDS __none __see nurses notes

_____

O ALLERGIES __NKDA __see nurses notes

_____

O SOCIAL Hx smoker _____ ETOH _____ drugs _____
residence _____ recent travel _____
O FAMILY Hx gall bladder _____ heart dz _____ hx of: _____ O

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JIM | 11/28/2005-abd pain | Event Log | Nurse | JSlaglePhysician | Forms

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Patient: Smith, Jack
MRN:
VisitID:
46y, M

Physician Clinical Report
Some Hospital Place General
1111 Someplace Rd., Dallas, TX 75244 111-222-3333
Registration Date/Time: 11/28/2005 17:16

***This is a preliminary document and is subject to change**

HISTORY OF PRESENT ILLNESS

Chief complaint- ABDOMINAL PAIN. He has had nausea and loss of appetite. No vomiting or diarrhea.

_____
Jim Slagle, M.D.

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loss of appetite _____ __diarrhea _____

severity of pain: _____

modifying factors: _____ O Tx PTA

_____

_____

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__hyperlipidemia _____

__previous surgery _____
__abdominal surgery _____

_____

_____

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_____

O ALLERGIES __NKDA __see nurses notes

_____

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T JIM

Smith, Jack

HOME

Charting
History
Exam
Course
Dx / DI

View
Clinical
Discharge
Nurse
Coding

Print
Clinical
Instrux/Rx

Closure
Discharge
Lock

Addenda

ABDOMINAL PAIN

time: _____ o

arrived: pvt vehicle EMS _____ context: _____

historian: patient EMS family _____ limited by: _____

o HPI

chief complaint: abdominal pain flank pain _____

started: just PTA today last night yesterday _____

_____

still present _____ gone _____ timing: _____

quality:
"pain"
sharp
stabbing
cramping
burning
dull
migrating
...
well localized
diffuse
_____

location:
generalized
R chest- central L chest
epig
RUQ LUQ
upper
R flank L flank
R abd L abd
peri
RLQ LLQ
lower
R pelvic L
suprapub
R back L back

__radiating to: _____ __additional abd pain _____

associated symptoms:
nausea _____ vomiting _____
loss of appetite _____ diarrhea _____

severity of pain: _____

modifying factors: _____ o Tx PTA

_____

_____

__similar symptoms previously:
once twice sev. times many times - occasionally frequently
milder as bad worse varying

o _____

__recently seen _____
here another / ED office clinic / hospitalized

o _____

o ROS

GI
__constipation _____
__black stools _____ bloody ___
__vomiting blood _____
URINARY
__difficulty w/ urination _____
__pain w/ urination _____
__frequency _____
Female __pregnant _____
LNMP: _____
__missed periods
__abnormal bleeding
__all systems neg. except

CONSTITUTIONAL
__fever _____ chills _____
Neuro & EENT
__headache _____
__sore throat _____
__blurred vision _____
CVS & Pulmonary
__chest pain
__difficulty breathing _____
cough

o PAST Hx

__negative __see nur:
__peptic ulcer _____
__gall stones _____
__bowel obstruction _____
__kidney stones _____

o MEDS __none

o ALLERGIES __NK

o SOCIAL Hx smi
residence _____

o FAMILY Hx gall bl

cough

for	1	2	3	minutes	weeks	ago
since	4	5	6	hours	months	PTA
several	7	8	9	days	years	times
many	-	0	1/2		AM	PM
yesterday	today	recently	chronically			
- still present	- gone	- improving	- worsening			

COUGH
mild moderate severe
---
dry / productive
scant moderate copious thick thin
clear yellow green brown white
blood tinged frank blood

cough changed from baseline smoker
sputum changed from baseline
---
similar to previous symptoms

EXHIBIT J

Blumberg No. 5119

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O ROS

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__difficulty breathing ____
cough

O PAST Hx

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O SOCIAL Hx sm
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EXHIBIT
K
Blumberg No. 5119

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PD1 Floyd - TSysPD1 - Remote Desktop

JIM | 11/28/2005-abd pain | Event Log | Nurse | JSlaglePhysician | Forms

Smith, Jack

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Patient: Smith, Jack
MRN:
VisitID:
46y, M

Physician Clinical Report
Some Hospital Place General
1111 Someplace Rd., Dallas, TX 75244 111-222-3333
Registration Date/Time: 11/28/2005 17:16

***This is a preliminary document and is subject to change**

HISTORY OF PRESENT ILLNESS

Chief complaint- ABDOMINAL PAIN. He has had nausea and loss of appetite. No vomiting or diarrhea.

REVIEW OF SYSTEMS

The patient has had a severe cough productive of thick, green, blood tinged sputum. No frankly bloody sputum.

Jim Slagle, M.D.

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EXHIBIT 7
Blumberg No. 5119